

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

B.P., et al.,

Plaintiffs,

v.

No: 2:23-cv-00071-TRM-JEM

CITY OF JOHNSON CITY, TENNESSEE, et al.,

Defendants.

**PLAINTIFFS' SUR-REPLY TO DEFENDANT PETERS' REPLY IN SUPPORT OF HIS
SUPPLEMENTAL MOTION FOR ATTORNEYS' FEES**

COME NOW Plaintiffs B.P., H.A., and S.H., individually and as proposed class representatives of all others similarly situated, ("Plaintiffs"), through their undersigned counsel, to submit this sur-reply to Defendant Peters' reply in support of his supplemental motion for attorneys' fees. Defendant Peters' reply attaches, and relies upon, a document produced by B.P. that was not referenced in his motion or in Plaintiff's opposition. This sur-reply seeks only to explain the provenance of that document.

Peters' reply attaches a series of text messages that were produced after B.P.'s deposition. While Plaintiffs regret this timing, the delay was despite good faith efforts and did not result in prejudice to Defendant Peters. On May 21, 2024, Plaintiffs learned from their ESI vendor that additional, potentially relevant data was identified on B.P.'s device, due to a search criteria error in the data pull. Baehr-Jones Decl. ¶ 4; Kramer Decl. ¶ 3. Plaintiffs' counsel had three straight days of depositions in this matter, and as soon thereafter as feasible, reviewed that data and produced responsive, non-privileged documents, including the attachment to Peters' reply.

Kramer Decl. ¶ 4. Plaintiffs' counsel Ms. Baehr-Jones coordinated with B.P. at the outset of the litigation (and on additional occasions as the case progressed) to search for and collect documents. Baehr-Jones Decl. ¶ 5. Those efforts should have, but did not, identify the text message at issue. *Id.* This was a mistake, but nothing more. Based on assurances from their ESI vendor, Plaintiffs believe that all responsive, non-privileged documents from B.P. have been produced. *Id.* As always, and as was done in this circumstance, if counsel become aware of documents that should be produced, they will do so promptly.

Importantly, the timing of Plaintiffs' production of text messages did not prejudice Peters. The Court already denied Peters' request during the May 21, 2024 hearing to keep B.P.'s deposition open pending additional document production. If Peters believes the later-produced documents warrant re-opening the deposition, he may make that motion, and Plaintiffs will respond in due course.

In conclusion, Defendant Peters' supplemental motion for attorney's fees should be denied for the reasons set forth in Plaintiffs' opposition and this sur-reply.

Dated this July 9, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing has been filed and served via the court's electronic filing system on July 9, 2024 to counsel of record:

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/s/ Elizabeth A. Kramer
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